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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re A.O., a Person Coming Under the  
Juvenile Court Law.

SONOMA COUNTY HUMAN  
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

A.O., et al.,

Defendants and Appellants.

A123693

(Sonoma County  
Super. Ct. No. 2522-DEP)

The mother and father of three-year-old minor, A.O. (hereafter Mother and Father), appeal from an order denying their petitions under Welfare and Institutions Code<sup>1</sup> section 388, and from the ensuing judgment terminating their parental rights. We affirm the order and judgment.

**I. BACKGROUND**

**A. Section 300 Petition**

A.O. was taken into protective custody on November 20, 2006, when she was six months old. She and her parents were staying temporarily in a filthy, unsanitary, and debris-filled trailer with no running water or food, but were otherwise homeless. After a night of methamphetamine use, Mother cut her wrists 30 or 40 times. Father gave Mother two pills and she fell asleep. When she awoke, Father was piling debris on top of

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

her. When she asked him what he was doing, he told her she had woken up too soon and he had intended to set the trailer on fire. Mother attempted to flee but Father forced her to the ground, sat on her, and punched her in the head. The police arrived after Mother got away, drove to a gas station, and called 911. Father was arrested, Mother was hospitalized for psychiatric observation, and A.O. was taken into protective custody. On the day of his arrest, Father attempted suicide by ingesting all of his medications, and was placed in the mental health unit of the jail.

The Sonoma County Human Services Department (Department) filed a petition pursuant to section 300, alleging Father's history of domestic violence placed A.O. at risk of harm, and Mother's substance abuse and mental health issues rendered her unable to care for A.O. The juvenile court ordered that A.O. be detained. An amended section 300 petition added allegations pertaining to Father's substance abuse and mental health issues, including his suicide attempt on the day of his arrest, and history of three prior arrests for domestic violence, two prior arrests for violating protective orders, and four prior arrests for child endangerment and related charges.

#### ***B. Jurisdiction and Disposition Hearing***

The Department's jurisdiction/disposition report summarized Mother's four prior child welfare referrals, including a report that Mother's oldest daughter, M.M., had been physically abused by Father. M.M. was reported to be afraid of Father and was living with her maternal grandparents. Father's child welfare history included 19 prior referrals involving all five of his children. Five involved physical abuse of his children. Father denied committing domestic violence or child abuse, and told the Department he was not interested in domestic violence treatment. The Department recommended A.O. remain in foster care and both parents receive reunification services.

Except for minor changes to the amended petition requested by Father, Father and Mother submitted on the amended petition and recommended disposition.

#### ***C. Six-month Review and Trial Visit***

In its six-month status review report, the Department recommended continuing services for Mother and terminating services for Father. According to the report, Mother

was participating in her case plan and dependency drug court. A psychological evaluation found Mother was not experiencing significant symptoms of depression but did have symptoms of anxiety. Mother was found to be improving by all objective measures in her treatment, although her prognosis was described as “ ‘somewhat precarious.’ ”

Father’s living situation continued to be unstable, his attendance at a substance abuse program was sporadic, and he was dropped from his domestic violence program in January 2007. He missed repeated appointments to enter another domestic violence program and he continued to deny any domestic violence, claiming the history of domestic violence allegations against him were largely fabricated by his wife. Father had continued throughout the period to focus his efforts on resuming his relationship with Mother, causing her to obtain two restraining orders against him. A psychological evaluation found Father suffered from “ ‘rather severe Axis I and Axis II disorders which significantly impair his ability to function in a variety of areas.’ ” The psychologist concluded Father “ ‘present[ed] as a rather poor prospect for reunification services given the pervasive and erratic nature of his multiple psychological disorders.’ ”

Father had continued to visit with A.O. but had difficulty focusing on her at first, frequently requesting to include others in the visits and talking with the supervisors. By the time the report was prepared, Father was better able to focus his attention on A.O. during visits. Nonetheless, the Department assessed that Father’s life remained chaotic and his “long standing behavioral patterns and significant emotional problems [were] unlikely to be remedied in the near future.” On that basis, the Department concluded there was no substantial probability extended services would enable Father to reunify with A.O. Father submitted on the Department’s recommendation and reunification services for him were terminated on July 18, 2007.

A trial home visit to Mother’s home began on June 4, 2007. Minor’s counsel expressed significant concerns in court about Mother’s ability to protect A.O. from the men in her life. The court admonished Mother that her focus needed to be on herself, her sobriety, and her child, and that it would not be a good idea to have third persons

“looming about” in her life. Unbeknownst to the court, Mother had renewed contact with Father “[w]ithin a month” after the trial home visit began. These contacts were as frequent as three to four times per week, continued until some time in September, and included A.O. Mother kept this a secret from her recovery program and both parents kept their renewed relationship hidden from the Department. On September 20, 2007, the day of the trial home visit review, Mother and Father contacted the social worker separately and admitted the restraining order violations that had occurred.

The trial home visit ended October 1, 2007, and A.O. was returned to her previous care providers. The Department withdrew its recommendation that the case move to family maintenance.

#### **D. 12-month Review**

The Department’s 12-month status review report recommended reunification services for Mother be ended, but an addendum report filed on the same date recommended—following a settlement conference—that services to Mother continue.

The 12-month status review report found Mother’s resumption of her contacts with Father after promising she would never do this again raised questions “about [Mother’s] reliability, understanding of and commitment to her own recovery and emotional development,” as well as about her “ability and willingness to protect her daughter.” Although the Department credited Mother for not resuming her former substance abuse, the Department was very concerned with her “lapses in integrity and honesty.” The Department observed, “[A.O.’s] needs cannot be put on hold; she needs consistent emotional connection, structure, dependability and a safe environment . . . . [as] the foundation upon which the rest of healthy development depends.”

The report noted Father was living in clean and sober housing, had been participating in a therapy program for his mental health and substance abuse issues, and in individual therapy, and had completed parenting classes in another dependency proceeding with A.O.’s half-brother. He had maintained weekly visitation with A.O. The Department reported that following the end of her trial visit with Mother, A.O. had

shown confusion and upset during her initial visits with her parents. However, the Department expected this issue to resolve with time.

The addendum report noted that despite Mother's repeated prior commitments to avoid "relationship complications in her life," the Department had learned Mother became involved with at least two other men besides Father since the last review, and had concealed these relationships from the Department. Other residents at the house where Mother was living during A.O.'s trial home visit reported Mother often kept A.O. out with her late into the evening. The report found Mother "has not demonstrated an ability to put the needs of her child first, especially when they are in competition with her own needs for adult companionship." Despite serious reservations about the probability of reunification, the Department was willing to go along with the provision of additional services because there was another child not before the court who might benefit if Mother could resolve some of the personal issues that had impacted her effectiveness as a parent.

The court adopted the Department's revised findings and proposed order to continue services.

#### **E. 18-month Review**

In its 18-month status review report, the Department recommended ending reunification services to Mother and setting a section 326.26 hearing. It found Mother had demonstrated her ability to maintain her sobriety under stressful circumstances, but she had not demonstrated truthfulness or that she was consistently capable of putting the needs of a small child ahead of her own needs for an adult relationship or had the skill and commitment to parent A.O. and her older daughter, M.M. The Department observed that both parents had proved themselves untrustworthy during A.O.'s trial placement with Mother, causing A.O. to have to undergo another major adjustment in her life when she was returned to foster care. The Department believed the risk to A.O. was too high to expose her to another disruption in her life in order to determine whether her mother could change her long-term behaviors. According to the Department, another interrupted attachment could harm A.O.'s capacity to form attachments and to look to others for care

and nurturing, and thereby jeopardize her personality, emotional health, and sense of safety and dependability in the world.

The 18-month status review report noted Father had been reliable in keeping scheduled visits with A.O. and A.O. enjoyed her contacts with her Father. The report also noted Father was working diligently in another matter toward reunifying with his family.

Following a settlement conference, the parents submitted on the Department's recommendation with the agreement the Department would pay for a bonding study to include both parents and the current care providers, and visitation would not be reduced.

#### ***F. Father's and Mother's Section 388 Petitions***

Three weeks before the date set for the section 366.26 hearing, Father filed a section 388 petition requesting a return to reunification, increased visits and/or a trial home visit with A.O., and a six-month continuance of the section 366.26 hearing. In his petition, Father stated that his son, K.O., had been returned to him on a trial home visit, he had followed through on his case plan in K.O.'s case, he had remained clean and sober, he was living with his wife, and he had a full-time job with health benefits. The Department opposed the petition on the grounds that Father failed to show how the proposed modifications would be in A.O.'s best interests given her stable placement with foster-adopt parents to whom she had bonded.

Mother also filed a section 388 modification petition, opposed by the Department, requesting A.O.'s return to Mother's care on family maintenance. Mother's petition was apparently not retained in the court's file.

#### ***G. Joint Adoption Assessment***

A joint assessment by the Department and the adoption branch of the California Department of Social Services (State Adoptions) recommended a permanent plan of adoption for A.O. with termination of parental rights. The Department and State Adoptions concluded A.O. was likely to be adopted and would benefit from the establishment of a permanent parent/child relationship with the prospective adoptive parents. A.O.'s removal from her prospective adoptive placement, on the other hand,

“would be seriously traumatic and detrimental to the child’s well being,” according to the report’s authors.

The assessment report found A.O. was developmentally within normal limits and presented as a sweet, loving, confident little girl, who was engaging with both peers and adults. The prospective adoptive parents were A.O.’s caretakers from January through June 2007 and again from October 2007 forward. The report describes them as very committed to the child and strongly desiring to adopt her. According to the report, the prospective adoptive parents are warm and loving, patient and attentive with A.O., and set appropriate limits for her. A.O. had a close and trusting relationship with the foster-adopt family, and substantial emotional ties to the prospective adoptive parents. She appeared relaxed with the parents and the family’s three biological children.

#### **H. *Section 366.26 Hearing***

A combined hearing on the section 366.26 issues and the parents’ section 388 petitions commenced on November 17, 2008. By stipulation, testimony presented for purposes of the section 388 hearing was to be considered for the section 366.26 hearing as well.

Mother’s evidence included letters from her therapist, her Narcotics Anonymous sponsor, and A.O.’s maternal grandmother to the effect that Mother was clean and sober, actively involved in her recovery, interacted positively with A.O., and was able to provide a good home for A.O. together with her half-sister, M.M.

Father submitted five letters of support and a status review report prepared in the dependency case of A.O.’s half-sibling, K.O. The letters showed A.O.’s visits with her father had gone well, he interacted appropriately and was attentive to her, and she had fun on their visits. The August 2008 status review report in K.O.’s case stated Father and his wife had worked hard to address issues of substance abuse, domestic violence, and parenting skills, and had complied with their case plans. The report recommended that K.O., who was then nine years old, be returned to parental custody.

## **1. *Bonding Study***

The Department submitted the completed bonding study to the court in addition to the joint assessment. The bonding study was prepared by psychologist, Dr. Gloria Speicher. She found that A.O. appeared to be developmentally on target, but noted that some of the signs of poor attachment or of possible fetal exposure to drugs might not show up until she was older, when more would be required of her in terms of accommodating to external limits and socializing with others. Speicher explained that secure attachment results from the experience of being consistently seen and heard and attended to by adult caretakers such that the child develops a sense of internal equanimity—a sense of the self as constant and efficacious. In Speicher’s opinion, based on her observations of A.O.’s interactions with her foster-adopt and biological parents, A.O. had a greater likelihood of achieving this attachment with the foster-adopt parents because of their ability to pick up on her cues and respond consistently to them.

Speicher believed Mother had a difficult time setting appropriate limits, picking up on A.O.’s initiatory cues, and responding in such a way that A.O. would have the experience of being consistently recognized and attended to. Mother was still in a learning process and her interactions with A.O. were filtered through her personal experience rather than being “‘second nature’” to her. Mother had only experienced “11 months of relatively consistent behavior” compared to 11 years of drug use. In Speicher’s opinion, A.O. did not have a strong and secure attachment, or the possibility of developing one, with her mother.

In the case of Father, Speicher viewed his history of noncompliance with treatment and case plans, domestic violence, poor impulse control, lying, and failure to abide by restraining orders as all being “examples of his inability to sustain the consistency of behavior that is so important for this child.” According to Speicher, A.O. was unlikely to attain secure attachment to her father “due to his demonstrated volatility and lack of consistency.”



## ***2. Priscilla Johnstone***

Social services worker, Priscilla Johnstone, was called as a witness by Father. She had formerly been assigned to A.O.'s case and was the social services worker in K.O.'s dependency case at the time of hearing. Johnstone testified that if Father had continued receiving services in A.O.'s case after July 2007, the services would have been identical to those he in fact received in K.O.'s case, except Father's parenting class would have focused on early childhood development. She indicated Father maintained weekly visitation with A.O. and the Department agreed to longer unsupervised visits beginning in June 2008.

Johnstone also described Father's failure to complete domestic violence treatment, including being dropped from one program, missing appointments for another, and finally being rejected by the Ananda Domestic Violence Treatment Program for being unable to participate in group therapy. She opined it would not be safe for A.O. to be in Father's home because he could not provide the kind of stable, consistent environment she needs, especially considering his wife's unusual medical needs and his son K.O.'s behavioral and emotional issues. In Johnstone's view, A.O. had an especially strong need for consistent parenting, a regular schedule, and a structured setting, which Father and his wife could not provide. Johnstone believed A.O. viewed her foster parents as her "emotional psychological parents." She was not confident A.O. could make a transition to a new home without additional harm to herself, even if family maintenance services were provided. She believed a second failed trial home visit would be "very traumatic" for A.O.

Johnstone testified K.O.'s situation was different from A.O.'s. He was a nine-year-old boy who, except for a single year in foster care, spent all of his life with his parents and was closely attached to them. Johnstone testified K.O. was very unhappy in foster care and frequently expressed his desire to return home. According to Johnstone, K.O. was now old enough to fend for himself, get his own breakfast, and get himself to school if he needed to. He was also "more visible in the community if his needs are not being met."

### ***3. Dr. Gloria Speicher***

Dr. Speicher agreed A.O. viewed her foster parents as her psychological parents. Speicher reiterated the substance of her bonding study. She expressed concerns about Father's denial that he had any kind of domestic violence problem and his refusal of treatment. She described Father as needing years of treatment for what she characterized as an impulse disorder in which he would get out of control if he felt his authority was being challenged by a spouse or child. According to Speicher, witnessing or being the recipient of that kind of behavior would be very damaging to A.O., placing her at potential emotional as well as physical risk in her father's care. She felt anger management classes are insufficient to address domestic violence in someone, like Father, with an Axis II diagnosis. She noted A.O.'s visitation with her father did not create the kind of stressful circumstances that were likely to trigger Father's impulse control problems. Speicher believed it was in A.O.'s best interest to stay with her foster-adoptive parents and be adopted by them, even if it meant she would never see her parents again.

### ***4. Father***

Father testified he worked full-time as a caregiver providing paid in-home support services for his wife in his own home. He shares the two-bedroom home, which he was able to pay for with his caregiver income, with his wife, and their nine-year-old son, K.O., and 13-year-old daughter, H.O. Father performed all of the household duties, including cooking, cleaning, laundry, and taking care of the house. He had set up a schedule for K.O.'s homework, chores, and bedtime, along with an allowance and system of rewards for his behavior. As of the date of the hearing, Father had been clean of drugs for two years. He served on the board of a sober living aftercare program. He had made use of extensive counseling and therapy services addressing his anger management and domestic violence issues, was attending parenting classes, marriage counseling, and Alcoholics Anonymous (AA) meetings, served as a sponsor for a recovering addict, and was studying to be a massage therapist at the National Holistic Institute.

According to Father, A.O. and K.O. have a loving, playful, physically affectionate relationship, and A.O. adores her 13-year-old half-sister. Father believed he had become a better person, and A.O. would benefit from living with him and her half-siblings. He apologized for his conduct in violating the restraining order in 2007 to see Mother and assured the court he would not put himself in that position again. On cross-examination, Father confirmed that his 19-year-old daughter, still refused to have contact with him and only two of his five children had been returned to his care.

### ***5. Mother***

Mother had not used drugs since the date A.O. was removed from her care. Mother testified that when A.O.'s trial home visit with her began she was still too early in her recovery and was not ready to become a full-time parent. She admitted she had put her romantic relationships ahead of her children in the past, but stated she had come to understand her children come before anything. Mother had no ongoing contact with Father. She was working full-time as a customer service representative. She planned to go back to school to get a degree in pediatric nursing. Mother testified she had made every possible effort to change her life, and had maintained her sobriety and learned how to be a good mother and keep her children safe.

On cross-examination, Mother admitted her mother was usually present for two to three hours of her four-hour visits with A.O.

### ***6. Court Rulings***

The court acknowledged Mother and Father had "grown and developed and matured throughout the Court's proceedings." At the same time, from the perspective of the child's best interests, A.O. was now in a secure, loving environment where she had bonded with her foster parents. This was different than K.O.'s situation. He had been removed from his father's care at an older age after bonding with his father, and that bond had been reestablished. A.O.'s trial home visit had been undertaken with the intention of returning her permanently to her mother's care and allowing her father to remain active in her life, but the responsibility fell on the parents to make this work. It did not work, A.O. was returned to her foster family, and she was bonded with them. In

the court's view, it was not in A.O.'s best interests to remove her from the foster parents to return her to either parent. With that finding, it denied both parents' section 388 petitions.

Regarding the termination of parental rights, the court found the stability and permanency A.O. would obtain from adoption outweighed the bonds she had with Mother and Father. The court found A.O.'s bond with her parents based upon A.O.'s age was not that strong. It therefore ordered that Mother and Father's parental rights be severed to free A.O. for adoption.

These timely appeals followed.

## **II. DISCUSSION**

Mother and Father contend the juvenile court abused its discretion in denying their section 388 petitions. With respect to the termination of his parental rights, Father further contends the juvenile court erred by (1) failing to find the beneficial relationship exception applicable, and (2) applying the wrong legal standard to determine that adoption was the best permanent plan for A.O.

### **A. Section 388 Petitions**

On appeal, we will not disturb the juvenile court's ruling on a section 388 petition absent a showing of a clear abuse of discretion. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415–416.) It is the appellant's burden to establish an abuse of discretion, which requires a showing the trial court made an arbitrary, capricious, or patently absurd determination. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318 (*Stephanie M.*))

#### **1. Mother's Petition**

Mother maintains the trial court abused its discretion by failing to consider A.O.'s "fundamental interest in being raised by her natural parent." According to Mother, such interest is qualified only by the requirement that the natural parents not expose the child to conditions "seriously detrimental" to the child's well-being. Since, according to Mother, she had resolved the issues causing A.O.'s removal, there were no detrimental conditions to consider and her petition should have been granted.

Mother freely acknowledges that no appellate court has recognized a fundamental interest of the child in the form she proposes. However, we do not operate in a legal vacuum on this subject. Our Supreme Court has in fact directly addressed the constitutional interests of parent and child at stake in dependency proceedings, and we are bound by its analysis. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) In *In re Marilyn H.* (1993) 5 Cal.4th 295 (*Marilyn H.*), the Supreme Court identified those interests as follows: “A parent’s interest in the companionship, care, custody and management of his children is a compelling one, ranked among the most basic of civil rights. [Citation.] *Likewise, natural children have a fundamental independent interest in belonging to a family unit [citation], and they have compelling rights to be protected from abuse and neglect and to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child. [Citation.] The interests of the parent and the child, therefore, must be balanced.*” (*Id.* at p. 306, italics added.)

In terms that are highly relevant here, the court in *Marilyn H.* went on to explain when the child’s right to stability and permanence may conflict with the natural parent’s interest in maintaining the family unit: “The Legislature has declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom reunification efforts with their parents have been unsuccessful. [Citations.] This interest is a compelling one. [Citation.] The state’s interest requires the court to concentrate its efforts, once reunification services have been terminated, on the child’s placement and well-being, rather than on a parent’s challenge to a custody order.” (*Marilyn H.*, *supra*, 5 Cal.4th at p. 307.)

Put another way, after the termination of reunification services, the parent’s interest in the care, custody, and companionship of the child is no longer paramount, and the child’s need for stability and permanence takes precedence. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) “[I]n fact, there is [at that stage] a rebuttable presumption that continued foster care is in the best interests of the child. [Citation.] A court hearing a motion for change of placement at this stage of the proceedings must recognize this shift

of focus in determining the ultimate question before it, that is, the best interests of the child.” (*Ibid.*)

Even assuming Mother has standing to assert the interests of her child in this proceeding, her arguments entirely overlook the child’s interest in permanence and stability. Accordingly, we reject Mother’s claim that the court abused its discretion by failing to deem A.O.’s asserted interest in being raised by her natural parent as automatically taking precedence over all other considerations, even after reasonable reunification services had been provided. Such a view is simply not consistent with California law.

## **2. *Father’s Petition***

Father contends the trial court abused its discretion by (1) using a simplistic comparison of his household with the foster parents’ household, without considering the importance of familial bonds, including sibling relationships, or the child’s interest in preserving an existing family unit; (2) failing to recognize the encompassing changes Father had made in his life and his ability to parent; and (3) treating A.O. as a “special needs” child and speculating about possible future behavioral issues to justify keeping her in a foster home.

Father’s claims are misplaced. The trial court did not deny his section 388 petition based on a simplistic, one-dimensional comparison of his household with that of the foster parents or based on any assumption or speculation that A.O. was a “special needs” child, nor did it discount the evidence Father had made dramatic, highly commendable changes in his life. Instead, the court properly focused on the right question: whether it was in A.O.’s best interests for the court to once again disrupt the strong, positive bonds she had formed with her foster family, and further delay permanence and stability in her young life, in order to give her father another chance to prove he could successfully parent her. In our view, there was ample evidence in the record to support the court’s conclusion that such a disruption or delay was not in A.O.’s best interests.

Dr. Speicher’s bonding study pointed out that A.O. was at risk of developing attachment issues because of her early neglect by Father and Mother, a risk that might not

fully materialize until a later age. Speicher concluded A.O. was more likely to achieve secure attachment with the foster-adopt parents than with her father, due to their parenting skills and Father's history of volatility. Speicher's trial testimony expanded on this theme. She emphasized the serious and longstanding nature of Father's impulse disorder and noted A.O.'s successful visitation experience with Father is not necessarily indicative of how Father would respond to her in more stressful circumstances. Speicher pointed out how damaging it would be for A.O. to witness or be the recipient of Father's impulsive or abusive behavior. While Father tries to minimize this testimony by claiming Speicher is misclassifying A.O. as a "special needs" child, or engaging in unfounded speculation about future events, we believe the testimony is relevant and probative. A.O. did suffer childhood abuse and neglect, and she is for that reason at greater risk than most children of having future attachment issues. She was also exposed to drugs in utero. While no expert can predict how or whether these early environmental influences will manifest themselves as A.O. gets older, an expert's opinion that the risks of future emotional damage to A.O. in her foster-adopt home are less than in her father's care is certainly not negligible or insubstantial evidence concerning the child's best interests. Father offered no expert testimony of his own refuting Speicher's conclusions on these points.

Father also complains that Speicher's testimony concerning his psychological diagnoses was speculative and unfounded because she had never been provided with the underlying written psychological assessment. The record shows that although Father's counsel cross-examined Speicher about the grounds for her opinion, he never disputed the nature or severity of the diagnoses Speicher assumed in giving her testimony. These had been disclosed in the Department's six-month status review report.<sup>2</sup> Further,

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<sup>2</sup> The status review report quoted from the psychological assessment as follows: "[Father's] symptom constellation involves rather severe Axis I and Axis II disorders which significantly impair his ability to function in a variety of areas'. . . '[He] presents as a rather poor prospect for reunification services given the pervasive and erratic nature of his multiple psychological disorders'."

Speicher's qualifications as an expert on this subject were not challenged, and no objection was made at trial to the testimony of which Father now complains. Under these circumstances, we are not prepared to say that Speicher's testimony was too speculative or unfounded to be counted as substantial evidence.

Social worker Priscilla Johnstone also provided relevant, probative testimony. In her opinion, A.O. would not be safe in Father's home because he could not provide the kind of stable, consistent environment and caregiving she required, especially in view of the issues Father and his wife were already dealing with, including his wife's medical needs and his son's emotional issues.<sup>3</sup> Johnstone pointed to A.O.'s history of interrupted attachments, including the trial home visit with her mother. She testified it was her experience and the experience of many therapists that early attachment with substance abusing parents is impaired if it occurs at all. Based on her own observations of A.O. at the time of the home visit and afterward, Johnstone believed a second failed trial home visit would be very traumatic for A.O. She believed A.O.'s situation was completely different from that of Father's nine-year-old son, K.O., who was less dependent on his father than A.O. would be, and more capable of protecting himself against abuse or neglect at home, if that should ever recur. And Johnstone shared Speicher's belief that A.O. was completely bonded with her foster-adopt parents and viewed them as her psychological parents.

Finally, only a year before the section 388 hearing, Father had violated his restraining order and engaged in a sustained pattern of deceiving the Department about his renewed contacts with Mother and unauthorized contacts with A.O. This breach of trust, occurring at a time when Father was ostensibly well along in his recovery, could

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<sup>3</sup> Father's own testimony confirmed he had his hands full already. He was responsible for the main household duties of cooking, cleaning, and laundry; he was his wife's primary caregiver; he attended frequent therapy, counseling, and AA meetings, and was an active board member of an aftercare agency; he provided transportation for his son's and daughter's counseling and activities; he was going to school and trying to obtain a massage therapy degree; and he was trying to be as involved as possible in his son's education and outside activities.



only have added to the court's concerns about the risk of returning A.O. to her father's care.

Again, although Father tries to minimize the adverse evidence by insisting A.O. has no special needs, and denying there is any risk of harm involved in transitioning her back to his care, there is substantial evidence in the record to the contrary on both points. The trial court acted within its discretion in finding, on this evidentiary record, it would not be in A.O.'s best interests to grant Father's section 388 petition.

### **B. Termination of Parental Rights**

Section 366.26, subdivision (c)(1)(B)(i) provides that the court should not terminate parental rights if it finds that "termination would be detrimental to the child due to one or more of the following circumstances: [¶] (i) [t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." Father contends the beneficial relationship exception applied in this case.

Father acknowledged he bore the burden of proof on this issue. (*In re Tabatha G.* (1996) 45 Cal.App.4th 1159, 1164.) To show the beneficial relationship exception applied, Father had to prove the following about his relationship with A.O.: "[T]he relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship . . . against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) As further stated in *Autumn H.*: "Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The exception applies only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent." (*Ibid.*)

There is no dispute Father maintained regular visitation and contact with A.O. The issue before this court is whether that contact created such a significant positive emotional attachment from A.O. to Father that A.O. would be greatly harmed if Father's parental rights were severed. In our view, Father's evidence established, at most, that A.O. enjoyed her visits with Father, and Father acted appropriately and responded appropriately to A.O. during the visits. There was no evidence of an attachment so significant and positive for A.O. that it outweighed her attachment to her foster-adopt family. In fact, the weight of the evidence—including the Department and State Adoptions joint assessment, the bonding study, and the testimony of Speicher and Johnstone—was that A.O.: (1) was more bonded to her foster-adopt parents than she was to either of her natural parents, (2) regarded the former as her psychological parents to whom she looked for love, attention, and comfort, and (3) would benefit more by being adopted than by continuing her relationship with Father. Although the beneficial relationship exception does not require A.O. have a “ ‘primary attachment’ ” with her father (see *In re S.B.* (2008) 164 Cal.App.4th 289, 300), it does require a relationship so important to A.O. that its loss would be greatly harmful to her. Based on the evidence before it, the trial court was justified in concluding A.O.'s relationship with her father did not meet that standard.

Father further maintains the court improperly chose adoption as the permanent plan for A.O. out of fear that doing otherwise might cause the prospective adoptive parents to “dump [A.O.] back into the foster care system.” According to Father, the court was overly focused on the expectations of “strangers,” who are looking for a child to adopt, over A.O.'s “own father and family.”

Father's argument is apparently based on the court's comments to the effect there was no guarantee A.O.'s foster-adopt family, or any other foster family, would be willing to keep A.O. on more than a short-term basis if the court postponed deciding whether adoption was the appropriate permanent plan for her. As the court explained, this was because most parents come into the foster family system either desiring to adopt or to provide short-term care only. But Father misconstrues the court's comments. The court

was not elevating the interests of foster care families above those of A.O.’s natural parents. The court was simply observing, as a practical matter, that the best way to assure A.O. the kind of stability she needed and deserved was to timely decide the question of adoption. That is perfectly consistent with the intent of the dependency statutes. As stated in *Marilyn H.*: “[T]he Legislature has directed the juvenile court to ‘give substantial weight to a minor’s need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.’ (§ 352, subd. (a).)” (*Marilyn H.*, *supra*, 5 Cal.4th at p. 308.)

The trial court did not err in terminating Mother’s and Father’s parental rights and ordering adoption as the permanent plan for A.O.

### **III. DISPOSITION**

The order denying the parents’ modification petitions and the judgment terminating their parental rights are affirmed.

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Margulies, J.

We concur:

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Marchiano, P.J.

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Banke, J.